THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 10839 OF 2002

ORDER:

1. This writ petition has been filed by the owner of the building bearing Municipal No. 24-137, plot No.40, Sainagar Colony, Chittoor with a prayer to declare the order passed by District Collector-Ist respondent herein in his proceedings Roc No.A4/513/98, dated 26-11-2001 as arbitrary, illegal, improper, unjust and violate of principles of natural justice.

2. The petitioner is the owner of the building bearing Municipal No.24-137 situated in plot No.40 of Sainagar Colony, Chitoor. The premises was taken on lease by the Deputy Director of Social Welfare, Chittor-2nd respondent herein for running Dress Making and Training Centre in the year 1987. The Executive Engineer Roads & Buildings, Chitoor inspected the building and issued proceedings No.133/D3/87, dated 11-7-1988 fixing the monthly rent for the premises at Rs.3,785/-. The petitioner demanded the Deputy Director, Social Welfare, Chittoor-2nd respondent to pay the property tax payable for the building to the Chittoor Municipality. Thereupon, the 2nd respondent addressed a letter Roc No.A4/469/94, dated 28-1-1994 to the Executive Engineer, Roads and Buildings, Chittoor seeking clarification whether the rent fixed is inclusive or exclusive of the property tax payable to the Chittoor Municipality for the building. The Executive Engineer-4th respondent sent a reply dated 8-5-1995 clarifying that the rent fixed for the building was exclusive of tax. The petitioner demanded the respondents to pay the rent for the period from April, 1998 to February, 2002. The 2nd respondent issued a banker cheque for Rs.35,958/- on 29-9-2001 towards part payment of arrears of rent due. When the petitioner approached the 2nd respondent for payment of the balance

amount, he came to know that the 1st respondent issued proceeding dated 26-11-2001 directing him to pay the house tax to the Municipality, Chittoor. The said proceedings are under challenge in this writ petition.

3. It is alleged in the affidavit filed in support of the petition that the 2nd respondent has to pay the tax to the Chittoor Municipality for the premises taken on lease for running dress making and training center production center. Paras 3 and 4 of the affidavit filed in support of the writ petition needs to be noted and they are :-

> "I submit that the Deputy Director of Social Welfare, who corresponded with the Executive Engineer, Roads and Buildings, Chittoor, was transferred. His successor once again raised an objection on being asked to pay the Municipal taxes due and started corresponding with the Executive Engineer. But he has not received the clarification sought for by him. Meanwhile, the Chittoor Municipality started pressurizing me to pay arrears of taxes due to it.
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> I submit that apart from not paying the Municipal taxes due for the building, the second respondent was also not regular in paying the monthly rent to me on the ground of non-availability of budgetary provision. Further, though my building was occupied in the year 1987, the rent therefore has not been revised till now inspite of my repeated requests"

4. Respondents 1 and 2 filed counter. One G.V. Raghuram has sworn to the counter affidavit filed on their behalf. It is stated in the counter affidavit that the proceedings of the District Collector, Chittoor, dated 26-11-2001 which is challenged in the writ petition is only consequential proceedings wherein the District Collector has granted Administrative Sanction for the rent already fixed by the Executive Engineer, R & B Chittoor. Therefore, the proceedings of the District Collector are not an independent proceedings but the same were

issued basing on the orders of Executive Engineer R & B , Chittoor. If at all, the writ petitioner is aggrieved, he has to challenge the orders of the Executive engineer R & B Chittoor, but not orders of District Collector, Chittoor. As such the writ petition itself is misconceived. It is further stated in the counter affidavit that the issues involved in the writ petition is required to be resolved by way of Civil Suit and not in a Writ Petition filed under Article 226 of the Constitution of India.

5. Heard learned counsel for the petitioner and learned Government Pleader for Social Welfare appearing for the respondents.

6. Learned counsel appearing for the petitioner submits that the proceeding of Executive Engineer R & B, Chittoor dated 12-7-1988 are explicit that the rent fixed for the premises is at Rs.3785/- per month excluding municipal tax and therefore, it is the obligation of the occupant of the premises i.e. lessee to pay property tax to the municipality. In a way he argued that the 2nd respondent being in occupation of the premises is liable to pay the Municipal Tax. He took me to the proceedings dated 12-7-1988 of the Executive Engineer and the correspondence made between the Executive Engineer R & B, Chittoor and the Deputy Director of Social Welfare, Chittoor.

7. Learned Government Pleader for Social Welfare submits that it is the obligation of the owner of the premises to pay the Municipal tax and the occupation of the premises is liable to pay the monthly rent to the owner.

8. The issue that is required to be resolved is whether the 2nd respondent being the lessee of the premises is liable to pay the Municipal Tax.

9. Undisputedly the terms of the lease are required to be interpreted in arriving the conclusion whether the rent fixed by the Executive Engineer is inclusive or exclusive of municipal tax. For adjudication of this issue the evidence is required to be adduced by the parties.

Unless the evidence is adduced, such an issue cannot be adjudicated upon. It is beyond the competency of the Writ Court to adjudicate the issue, which requires the parties to place the evidence in support of their respective contentions. The petitioner has to workout his remedy in a competent Civil Court.

10. Giving liberty to the petitioner to workout his remedies in the Civil Court, this Writ Petition is disposed of. No order as to costs.

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Justice B.Seshasayana Reddy

13th September, 2006.
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THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

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W.P.No. 10839 OF 2002

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13th September, 2006.